

2005 ASSEMBLY BILL 414

May 10, 2005 – Introduced by Representatives J. FITZGERALD, COLON, HUNDERTMARK, KRAWCZYK, VAN ROY, MUSSER, MEYER, OTT, STONE, F. LASEE, AINSWORTH, ALBERS, BIES, HONADEL, KLEEFISCH, LAMB, SUDER and WOOD, cosponsored by Senators S. FITZGERALD, BRESKE, A. LASEE, KANAVAS, KEDZIE and GROTHMAN. Referred to Committee on State Affairs.

1 **AN ACT** *to repeal* 101.123 (2) (c); *to renumber* 101.123 (1) (a); *to amend* 101.123
 2 (1) (f), 101.123 (1) (g) and 101.123 (4) (a) 1.; and *to create* 101.123 (1) (ab),
 3 101.123 (2) (d), 101.123 (3) (e), 101.123 (3) (h), 101.123 (3m) and 101.123 (4) (a)
 4 2m. of the statutes; **relating to:** smoking in restaurants and bowling centers
 5 and the regulation of smoking by counties, cities, villages, and towns.

Analysis by the Legislative Reference Bureau

Current law, with certain exceptions, prohibits smoking in enclosed, indoor areas within specified buildings and facilities, including restaurants with a capacity of more than 50 individuals. Among those places that are exempt from the prohibition are taverns holding a “Class B” intoxicating liquor license or Class “B” fermented malt beverage license issued by a municipality (liquor license) and restaurants holding a liquor license, if the sale of alcohol beverages accounts for more than 50 percent of the restaurant’s receipts.

This bill expands the general prohibition against smoking in restaurants so that the prohibition applies regardless of the restaurant’s capacity. The bill also creates a new exception to this general prohibition. Under the bill, the prohibition against smoking in restaurants does not apply to the bar area of a restaurant if the sale of food in the bar area is only incidental to the sale of alcohol beverages.

Current law, with certain exceptions, authorizes a person in charge of any building or facility where smoking is prohibited to designate smoking areas within the building or facility. This bill provides that a person in charge of a restaurant may

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not designate an area of a restaurant as a smoking area unless smoking is otherwise allowed in that restaurant.

Current law does not prohibit smoking in bowling centers. This bill prohibits smoking in bowling centers unless the bowling center meets certain conditions. In order for the bowling center to be exempt from the general prohibition against smoking, the bowling center must not be primarily devoted to the sale of alcohol, must prohibit smoking on each bowling lane when the bowling center is holding youth league play, must have an adequate ventilation system, must establish periods of time when smoking is prohibited in the bowling center, and must provide the same service to nonsmoking customers in a smoke-free area that it provides to smoking customers.

Current law provides that a county, city, village, or town (local government) may enact ordinances and a school district may adopt policies that protect the health and comfort of the public if those ordinances or policies comply with the purpose of state laws regulating smoking. This bill specifies that a local government may not enact or enforce an ordinance or adopt or enforce a resolution regulating smoking unless the ordinance or resolution strictly conforms with state law.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ag).

2 **SECTION 2.** 101.123 (1) (ab) of the statutes is created to read:

3 101.123 (1) (ab) “Bowling center” means premises on which one or more
4 bowling lanes are located.

5 **SECTION 3.** 101.123 (1) (f) of the statutes is amended to read:

6 101.123 (1) (f) “Restaurant” means an establishment defined in s. 254.61 (5)
7 ~~with a seating capacity of more than 50 persons.~~

8 **SECTION 4.** 101.123 (1) (g) of the statutes is amended to read:

9 101.123 (1) (g) “Retail establishment” means any store or shop in which retail
10 sales is the principal business conducted, except a tavern operating under a “Class
11 B” intoxicating liquor license or Class “B” fermented malt beverages license, ~~and~~
12 ~~except bowling centers.~~

13 **SECTION 5.** 101.123 (2) (c) of the statutes is repealed.

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1 **SECTION 6.** 101.123 (2) (d) of the statutes is created to read:

2 101.123 **(2)** (d) A county, city, village, or town may not enact or enforce an
3 ordinance or adopt or enforce a resolution regulating smoking unless the ordinance
4 or resolution strictly conforms with this section.

5 **SECTION 7.** 101.123 (3) (e) of the statutes is created to read:

6 101.123 **(3)** (e) The bar area of a restaurant where alcohol beverages are sold
7 for consumption on the premises if the bar area includes a counter with seating for
8 customers and food is served in that area only incidental to the serving of alcohol
9 beverages.

10 **SECTION 8.** 101.123 (3) (h) of the statutes is created to read:

11 101.123 **(3)** (h) Bowling centers described under sub. (3m).

12 **SECTION 9.** 101.123 (3m) of the statutes is created to read:

13 101.123 **(3m)** BOWLING CENTERS. (a) A bowling center meets the exception
14 under sub. (3) (h) if all of the following apply:

15 1. The bowling center is not primarily devoted to the sale of alcohol beverages.

16 2. The bowling center prohibits smoking on each bowling lane, including the
17 approach to each bowling lane, and in the concourse area of the bowling center, if any,
18 during any time when the bowling center is holding league play for persons under
19 18 years of age.

20 3. The ventilation system in the bowling center is adequate to ventilate the
21 premises and to prevent effectively, to the maximum extent practicable, tobacco
22 smoke from entering any area where smoking is prohibited under this paragraph.

23 4. The bowling center establishes periods of time when smoking is prohibited
24 sufficient to meet the reasonable customer demand for such periods.

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1 5. The bowling center provides to nonsmoking customers in a smoke-free area
2 the same services that it provides to smoking customers.

3 (b) Nothing in this subsection prohibits a bowling center from doing any of the
4 following:

5 1. Designating an area, including an entire room, of the bowling center as a
6 smoking area if the bowling center posts notice of the designation of a smoking area
7 in or near the area designated.

8 2. Allowing smoking in the entire bowling center, or an entire room of the
9 bowling center, for a limited period of time during which the room or bowling center
10 is being used exclusively for a private function.

11 **SECTION 10.** 101.123 (4) (a) 1. of the statutes is amended to read:

12 101.123 (4) (a) 1. Except as provided in ~~subd. subds. 2. and 2m.~~, a person in
13 charge or his or her agent may designate smoking areas in the places where smoking
14 is regulated under sub. (2) (a) unless a fire marshal, ~~law, ordinance or resolution~~
15 prohibits smoking.

16 **SECTION 11.** 101.123 (4) (a) 2m. of the statutes is created to read:

17 101.123 (4) (a) 2m. A person in charge or his or her agent may not designate
18 an area of a restaurant as a smoking area. This subdivision does not apply to places
19 described under sub. (3) (c), (d), or (e).

20 (END)